MARINE DEPARTMENT.

PRECIS

OF

CORRESPONDENCE REGARDING THE

BILL TO AMEND THE

KARACHI PORT TRUST ACT,

1886.

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Bill to amend the Karachi Port Trust Act, 1886.

Clauses 2 and 3.—Reconstitution of the Board.

1. The Board under the existing law consists of nine members, *viz.*—

Four Government Trustees (including Chairman and Vice Chairman).

Two Trustees elected by the Chamber of Commerce, Karachi.

Two Trustees elected by the Municipal Commissioner, Karachi.

One Railway official (*i.e.*, the Manager of the North-Western Railway or an officer appointed by the Manager to act for him).

2. The Bill to amend the Karachi Port Trust Act, 1886, as introduced into the Legislative Council at the meeting held on the 26th February 1896 withdrew from the Karachi Municipality the right of nominating two members on the Board, giving Government an additional member and increasing the number of Chamber of Commerce representatives to three. No change was made in the number of Trustees.

3. The Select Committee appointed to consider the Bill suggested that the present number of Trustees should be increased to a maximum of 11, and in view of the objections urged by the Karachi Municipality to the total withdrawal from them of representation on the Board, proposed to allow the Municipality to retain one representative on the Board and to increase the Chamber of Commerce nominees from 2 to 3.

4. In his report* on the memorial from the Karachi Municipality the Commissioner in Sind suggested an amendment of the Act, so as to give the Municipality power to elect members outside their own body and also was in favour of the maximum number of Trustees being fixed at 12. In reporting at the same time on the memorial from the Karachi Chamber of Commerce asking for additional representation on the Trust, the Commissioner in referring to the question

* No. 182, dated 27th January 1896.

of Municipal representation on the Trust remarked* as follows :—

"For purely Municipal representation he (the Commissioner) cannot imagine a better arrangement than the appointment *ex-officio* of the President of the Municipality for the time being. As a matter of fact, the President of the Municipality has for many years past been a Member of the Port Trust Board, but he has not been returned thereto by the Municipal Commissioners as one of their representatives."

* Para. 3 of Memo. No. 183-A., dated 27th January 1896.

5. The Honourable Mr. P. M. Mehta also proposed† certain amendments in the amending Bill which were to the following effect:—

† Letter dated 22nd February 1896.

(1) to raise the maximum number of Trustees to 12 ;

(2) to allow the Chamber of Commerce to elect 3 Trustees;

(3) to allow the Municipality to elect 2 Trustees and to permit them to elect any persons they choose whether Municipal Commissioners or not.

6. With regard to these proposals the Honourable Mr. Nugent minuted‡ as follows:—

‡ Minute dated February 1896.

"As regards (1) the Select Committee considered 11 a sufficiently high maximum number but I see no very strong reason why the number should not be increased to 12. This is merely the permissible maximum, it is entirely optional with Government to appoint up to the maximum or not;

(2) is what the present Bill and the Select Committee propose;

(3) is a return to the present Act, so far as the number of Trustees elected by the Municipality is concerned, but the provision to give *carte blanche* to the Municipality to elect any persons they may choose and not limit their selection to Municipal Commissioners is new. I am opposed, as were all the members of the Select Committee, to continuing to the Municipality the power of electing two Trustees. We considered that in view of all the circumstances it was quite sufficient to allow the Municipality to elect one Trustee alone and to this opinion, I adhere. It seems to me *prima facie* inadvisable to adopt the proposal as to the persons who may be elected by the Municipal Commissioners. It appears to me expedient to restrict their choice to one of their own body and in practice, I imagine, a Municipal Commissioner would always be elected. He clearly would be the best representative of the Municipality and the person most likely to be able to put forward their views with authority. Under Mr. Mehta's scheme the Trustees would consist of—

(*a*) 1 Railway official.

(*b*) 3 Chamber of Commerce nominees.

(*c*) 2 Municipal Commissioners.

(*d*) 6 Government nominees.

The Chairman, a Government official, would have a casting vote, if on a division (*a*), (*b*) and (*c*) coalesced as against (*d*)—thus giving the Government nominees a narrow majority.

The main objection to raising the maximum number to 12 and filling up all the seats is that each Trustee means an annual cost in fees to the Port Trust Funds of Rs. 1,560; and further that the full number of 12 is not likely to be required for years to come and is certainly not at present needed. But without the full 12, Government might at any moment be placed in a minority were Mr. Mehta's other proposals adopted and it has to be remembered that one of the real objects of the present legislation though it was not openly avowed, was by reducing the number of elected members to give the Government nominees a clear majority."

7. The Commissioner in Sind was asked to favour Government with his opinion on the whole question of the composition of the Board and in particular on the following points :—

(*a*) Whether the Karachi Chamber of Commerce should be allowed to elect three Trustees ;

(*b*) Whether the proposal that the President of the Karachi Municipality (or the Vice-President, if the President is already a Member) should be appointed *ex-officio* a Member of the Port Trust Board should be accepted ;

(*c*) Whether the Karachi Municipal Commissioners should be allowed to retain one representative as recommended by the Select Committee and, if so, whether provision should be made to enable them to elect their representative from outside their number ; and

(*d*) What should be the maximum number of Trustees on the Trust as re-constituted.

Letter No. 1417, dated 3rd July 1896.

8. The Commissioner (Mr. James) in reply* recommended that the following should be the constitution of the Karachi Port Trust in future, *viz.* :—

Nominated by Government.

1	Chairman.	
1	Vice-Chairman (now the Collector of Customs).	Officials.
1	Manager, North-Western Railway.	
1	Military Member.	
2	Two others ...	(probably non-officials).

Nominated by Chamber of Commerce.

3	Three ...	(presumably) non-officials.

Nominated by Municipality.

2	Two ...	(presumably) non-officials.

Total... 11, as compared with 9 now;

that the Municipality should be allowed to retain two members, as at present, and not only one as proposed by the Select Committee, and that provision should be made to enable the Municipality to elect their representatives from outside their own body, but he did not consider that the proposal that the President of the Karachi Municipality (or the Vice-President, if the President is already a Member) should be appointed *ex-officio* a Member of the Port Trust should be accepted.

The proposals of the Commissioner in Sind having been approved by Government, the necessary alterations were ordered to be made in the Act. The draft Bill originally submitted by the Remembrancer of Legal Affairs in pursuance of these instructions provided that the number of Trustees should be not less than 9 or more than 11, but with reference to this it was decided by the Honourable Board that the number should be definitely fixed at 11 as recommended by the Commissioner in Sind.

9. As regards the Municipal representation on the Board the Honourable Mr. James minuted* as follows :—

* Minute dated 6th August 1898.

"It is proposed to eliminate the words 'from their own number,' so as to allow the Members to elect fit persons outside their own body. This was proposed by Mr. Mehta, but in the first instance by the Honourable Sir Charles Ollivant, who also, and I thoroughly agree with him, said the words should be inserted necessitating the Member's nominees being persons such as a 'Native Merchants Association' should nominate. The tendency to 'job' the Member's nominees and send persons unconnected with Commerce to the Board is incurable and objectionable.

I trust therefore His Excellency will concur in substituting for the words 'from their own number' the words 'who must be merchants or persons whose main calling is that of commerce.'"

The Honourable Sir Charles Ollivant agreed† that the Municipality should be allowed to elect their representatives from outside their own body in the same way as the Chamber of Commerce, but he added:—

† Minute dated 26th August 1898.

'"On mature consideration I do not think it would be well to limit their choice to 'commercial men.' I admit this was my own proposal. But now we are increasing the number on the Board, and we are not declaring that the President of the Municipality shall be *ex-officio* Trustee. Of course we might say that '*one* at least of the Members elected by the Municipality

shall be connected with commerce' but this would be a direct justification to them to elect somebody else *e. g.* a lawyer as their second member. The true check will be that they know that if they do not exercise their franchise reasonably there will be an outcry and they will be deprived of it."

With reference to this the Honourable Mr. James minuted* as follows :—

* Minute dated 27th May 1898.

"I am afraid I cannot concur with my Honourable Colleague. The Municipality's representatives must be connected with commerce, because there are so many sub-committees (for which no fees are given) in which lawyers and newspaper-editors are useless. That the Municipality should nominate members to the Port Trust is an anomaly in itself. As we propose maintaining the anomaly the least we can do is to secure that they send members who will be useful and not a drag on the Port Trust. There is a very strong feeling on the subject in Karachi and Mr. Giles, I am aware, is strongly in favour of the amendment. Rather than abandon it, I should prefer to see the Municipality's nominees abolished and replaced by Government nominees.

"If the Municipality abuse their power of nominating, my Honourable Colleague thinks it can be taken away. But it would take 10 years for the legislation to amend the Act, when this Bill is once disposed of. The legislative machine moves very slowly. The practical working of the Port Trust and not the susceptibilities of the Municipality is the point of prime importance."

Whereupon the Honourable Sir C. Ollivant wrote† as follows :—

† Minute dated 8th September 1898.

"We both agree that the Municipality should not be restricted to election from their own members, as at present. My Honourable Colleague further proposes (adopting the proposal which I myself made in Sind) to stipulate that the Municipality's choice must be restricted to 'merchants or persons whose main calling is that of commerce.' Now I hesitate to say that the Municipality should be debarred from electing even their own President, if he should not be a merchant. Recently they had as President Mr. Possman, the Director of the Persian Gulf Telegraph and I think that gentleman was selected by Government as a member of the Port Trust Board. Why should a similar selection by the Municipality be made impossible by law?

"I quite agree that we want practical business men in the Port Trust Board and not parochial politicians, but the selections so far made by the Municipality have been satisfactory, and the limitation proposed might with some justice be regarded as an uncalled for reflection. Since I made the proposal it has been determined to increase the number of Members on the Board, and the danger of not having Commerce properly represented is reduced. On the whole therefore I prefer to adhere to the views expressed in my previous minute.

"One word I will add; Is it necessary even from my Honourable Colleague's point of view that this should be made a Government question? Suppose for instance we omit the words which he desires to insert and at a later stage the Honourable Mr. Mc Lellan should propose to insert them may we not regard the question as an open one?".

The solution suggested in the concluding portion of the above minute was accepted.

10. With regard to the Railway representative on the Board the Honourable Sir Charles Ollivant remarked* as follows:—

* Minute, dated 26th August 1898.

"Section 9 of the present Act says 'the names of all Trustees duly elected or appointed shall be published in the *Bombay Government Gazette* and in the *Sind Official Gazette*.' Section 7 says 'one (Trustee) shall be the Manager .... or such officer of the .... Railway as the said manager from time to time appoint *to act for him* in this behalf.' Now if the Manager himself served there will be no appointment and therefore no notification in the *Gazette*. But he ought formally to communicate his intention of serving personally or not. For the Board as finally constituted should be notified. As a matter of fact, however, he never has served, but has appointed officers 'to act for him.' And *their* appointments, presumably owing to this phraseology have not been notified."

To cure this defect new Section 7 (*vide* Clause 3 of present Bill) provides that "Government shall appoint the Chief Officer of the North-Western Railway or such officer of the Railway as the Chief Officer may nominate in his stead" and this will ensure the notification of the appointment of the officer, who serves on the Board. To meet the contingency of a change in the designation of the officer the title "Manager" of the North-Western Railway has been altered to "Chief Officer."

Clauses 4, 5, 10, 12 *and* 16 *of the Bill.*

As explained in the Statement of Objects and Reasons these are intended to remove from the Act provisions which have now become obsolete.

Clause 6.—*Saving provision for acting appointment of Trustees when necessary for less than three months.*

This has been taken from Section 2 of Bombay Act I of 1899, amending the Bombay Port Trust Act, 1879. The reasons for the amendment are stated in para. 2 (3) of the Statement of Objects and Reasons.

Clauses 7 and 8. Disqualifications for office of Trustees, &c.

The new sections proposed will assimilate the provisions of the Karachi Port Trust Act with those of the Bombay Port Trust Act as amended by the Act I of 1899. The reasons for the amendments are given in paragraph 2 (4) of the Statement of Objects and Reasons.

Clause 9.—Signing of contracts by Chairman of Board and Port Engineer.

Under Section 18 of the Act as it stands the Chairman of the Trust may on behalf of the Board enter into contracts of the value of Rs. 1,000, all contracts of a higher value being signed by the Chairman and two other Trustees. The result of this provision is that the signing of contracts is constantly delayed. The Port Trustees, Karachi suggested an amendment giving the Port Engineer power to enter into those contracts at present entrusted to the Chairman and they proposed that the limit of Rs. 1,000 should be raised to Rs. 5,000 this being the amount upto which a Superintending Engineer or Executive Engineer has power to sign contracts for works in the Public Works Department. The Commissioner in Sind supported the suggestion and the Remembrancer of Legal Affairs was accordingly instructed to prepare a draft of the necessary amendment. With reference to this amendment the Honourable Mr. James remarked that it proposed to substitute the "Port Engineer" for the "Chairman," but as it apparently was not intended to deprive the Chairman of the power he, at present, has of signing contracts, he suggested that the Act should be altered so as to give the Port Engineer *concurrent powers* with the Chairman to sign the contracts in question. The necessary changes were accordingly made in the draft amendment. The Government of India to whom the draft Bill was subsequently forwarded, however, took exception to the proposal to raise the limit to Rs. 5,000, on the ground that the limit fixed by each of Port Trust Acts* in force in the Presidencies of Madras, Bombay and Bengal was Rs. 1,000 only, and further that the higher limit suggested appeared to conflict with the proviso to Section 29 of the Karachi Port Trust Act, which requires that the contract for any work, the estimated cost of which exceeds Rs. 1,000, should be entered into by the Board after the plan s

* Madras Act II of 1886, Section 65.
Bombay Act VI of 1879, Section 17.
Bengal Act III of 1890, Section 49.

and estimates of the work have been approved by them. The existing limit of Rs. 1,000 was accordingly retained to meet the wishes of the Government of India.

Clause 11.—*Grant of wound pensions or compassionate allowances.*

This clause corresponds to Section 7 of Bombay Act I of 1899 and enables the Board to give pensions, gratuities or compassionate allowances to such officers and servants engaged by the Board or in the pilot services as may be injured, or to the surviving relations of such as may be killed in the execution of their duty. An amendment for the same purpose is embodied in the Clause 20 (2) of the Bill.

Clause 13. *Amendment fixing the rateable value of Port Trust property and the payment to be made to the Municipality in lieu of property tax.*

In 1896 the Commissioner in Sind addressed the Municipality of Karáchi and the Karachi Port Trust regarding certain differences between these two bodies in respect of the assessment of Port Trust property for municipal taxation and suggested as follows. (Para. 5 of Commissioner's letter No. 304, dated the 9th February 1896, printed in the preamble to Government Resolution* No. 3462, dated the 6th August 1896).

* Appendix A.

"In the assessment, as the term is usually employed, there are two matters to be determined; first, the rateable value of the premises and then the amount to be paid. And in respect of both, I think, it would be to the advantage of the Port Trust and the Municipality, if provisions were inserted in the law analogous to those contained in Section 145 of the City of Bombay Municipal Act (3 of 1888). It seems to me that in Karáchi, as regards rateable value, it would be well to prescribe that in the event of the Municipality and the Port Trust Board being unable to come to an agreement each should appoint an arbitrator with the Commissioner in Sind as umpire and that the decision so arrived at should be final and should hold good, as in Bombay, for a period of five years; and that the amount to be paid on the rateable value so determined, should as in Bombay, be fixed at nine-tenths of the sum which would be payable by an ordinary owner of buildings or lands in the city. * * *"

2. In paragraph 9 of his letter No. A of 15th February 1896 forwarded by the Commissioner in Sind with his No. 380, dated 17th February 1896, the Chairman, Karáchi Port Trust, reported as follows:—

"Both bodies fully agree to the proposals made in the 5th para. (*ante*), and I trust it may be

possible to have two sections, one analogous to Section 145 of the City of Bombay Municipal Act and the other providing for arbitration on disputed questions regarding rateable value, inserted in the Port Trust Amendment Act which is now before the Legislative Council."

The Municipality considered that provision for special rates could be made by an addition to the Municipal rules, but the Commissioner preferred that it should be secured by statute (*vide* Commissioner's No. 454 of 24th February 1896, in the preamble of Government Resolution, No. 3462, dated the 6th September 1896).

3. The subject was further discussed by the Commissioner in Sind (Mr. James) in para. 12 of his letter* No. 1417, dated the 3rd July 1896, in which he proposed a draft new Section for insertion in the Bill to amend the Karáchi Port Trust Act. This draft was referred to the Remembrancer of Legal Affairs and that officer with his letter† No. 1764, dated the 7th December 1896, submitted two alternative drafts A and B, providing for the matters dealt with. Draft A followed with certain modifications, the draft proposed by Mr. James, while draft B was based on the model of Section 145 of the Bombay Municipal Act. The Commissioner (Mr. James), who was consulted, preferred draft A to B and recommended the adoption of the former with certain modifications suggested in his memorandum‡ No. 204, dated the 18th January 1898. Draft A with the modifications, was accordingly inserted in the draft Bill prepared by the Remembrancer of Legal Affairs.

*Appendix B.

†Appendix C.

‡Appendix D.

4. When the Bill was submitted to the Honourable Board the Honourable Sir Charles Ollivant in his minute, dated the 26th August 1898, stated as follows:—

"In clause 28 A (2) it is proposed to insert the words 'whether in the limits of the Municipality *or otherwise*', and the authority for this is the Commissioner in Sind's memorandum No. 204, dated the 18th January 1898, para. 3. But I do not find sufficient explanation in that communication to convince me that the proposal is admissible. It cannot surely be intended to subject to municipal rates property which is outside the Municipal area? The Commissioner in Sind in the exercise of the powers of a local Government has full power to alter the limits of the Municipal area from time to time, so, as far as I can see, there need be no fear of *bona fide* Municipal interests being jeopardized."

With reference to this the Honourable Mr. James wrote* as follows:—

* Minute dated 27th August 1898.

"The reason why it is proposed to allow the Municipality of Karáchi to tax the Port Trust property, 'whether within the Municipal limits or otherwise,' is that the limits of the Municipality are 'high water-mark' and there is a constant fight whether this means 'high water mark' at the date of the notification or 'high water-mark' at *any* time. The Port Trust reclaims part of the sea, erects buildings, and then claims not to pay Municipal rates, because these are *outside* the 'high water mark as it existed previously.' To obviate this the Commissioner in Sind recently issued a fresh notification stating that the boundary was the 'high water-mark as it may exist from time to time,' but it is not certain whether the lawyers will not object to this definition as indefinite or *ultrá vires*."

"But I have no objection to the words being omitted and the Commissioner in Sind can issue a fresh notification of the boundaries when desirable."

The words were accordingly omitted from the draft section as finally approved.

5. Sub-section (5) of new section 28A proposed to give the Karáchi Port Trust the same concession which is at present enjoyed by the Bombay Port Trust of paying only nine-tenths of the full rates to the Municipality, but as legislation was in contemplation withdrawing this concession from the Bombay Port Trust, so as to obtain in this way a contribution from that body towards the plague expenditure incurred by the Municipality in the City, the Honourable Mr. James deemed it inexpedient to allow any rebate in the case of Karachi. He remarked:—

"It was proposed by Sir Charles Ollivant as Commissioner in Sind, but it is his view that it should now be taken out of the Bombay Act. Whether this is done or not (and in Bombay it was part of a kind of compromise) I think it would be a pity to *extend* the system after the experience of the last three years. Municipal burdens are greatly becoming heavier and the Port Trust should pay its full rates."

The above view was concurred in by the Honourable Board and the proposed provision was accordingly excluded from the draft Bill. It may be noted that the Bill to amend the Bombay Port Trust Act, which is now in the Legislative Department, provides for a reduction from 10 to 5 per cent. of the rebate on the general Municipal tax levied on Port Trust property in Bombay.

Sub-section (6) of the new section was inserted at the suggestion of the Honour-

able Mr. James in order to provide for the payment by the Board to the Municipality of an additional sum (*i.e.*, apart from the payment already provided for in lieu of property tax) in respect either of a supply of water or of a conservancy cess or of any other special service rendered.

Clause 14 (1). *Contribution by the Port Trustees towards the cost of constructing and maintaining light-houses beyond three miles from the limits of the Port.*

In 1890-91 correspondence took place between this Government and the Government of India regarding the proposed construction of a light-house on Cape Monze, a headland 17 miles westward of Manora. The Port Trustees, Karachi, to whom a reference was made, intimated that they would be willing to accept any reasonable charge they would be justified by the Karachi Port Trust Act in incurring in connection with the light-house, but a reference to the Remembrancer of Legal Affairs elicited that the Board had no power under the Karachi Port Trust Act to construct a light-house at Cape Monze, as clause 3 of Section 29 of the Act authorized the construction of light-houses necessary for the safe navigation of the approaches to the Port *within a distance of three miles from the limits of the Port* whereas Cape Monze was about 17 miles distant from the Port. An addition to the Section 29 (3) of the Act has accordingly been introduced by clause 14 (1) of the Bill which enables the Board, with the sanction of Government, to contribute towards the cost of constructing and maintaining light-houses beyond three miles from the Port. Cape Monze, it may be stated, is in British territory, being situated at the south-eastern extremity of the estuary of the Hab River, which separates Sind from Beluchistan.

Clause 14 (2). *Provision for the supply of water for shipping in the Port and for extinguishing fire, &c.*

These amendments are taken from Bombay Act I of 1899, which amends the Bombay Port Trust Act (*vide* para. 2 (10) of the Statement of Objects and Reasons).

Clause 15. *Provision to secure effectual control in the case of vessels lying alongside piers and wharves to the prejudice of other traffic.*

These amendments were suggested by the Port Trustees, Karachi, who

pointed out the desirability of empowering an officer appointed by the Board to issue the necessary notice, as in case of emergency it would be impossible to obtain promptly the orders of the Board. For example, in the event of a vessel approaching the jetty or wharf and insisting on occupying a berth when it might be inexpedient for such vessel to come alongside, such vessel would be alongside long before the orders of the Board could be obtained, and then could only be removed under proviso to Section 35 of the Act. With regard to the substitution of 12 hours for 36 hours in the proviso just referred to, the Port Trustees, Karachi, remarked:—

"Twelve hours after receipt of notice would be ample time to allow of the removal of a vessel. The time fixed by the section at present, viz., 36 hours, is very inconvenient as it often happens that other vessels lying outside waiting for a berth are delayed for 36 hours, which is at times a serious matter."

The reason for raising the maximum charge leviable on non-compliance with an order under Section 35 is explained in para. 2 (9) of the Statement of Objects and Reasons.

Clauses 16 *and* 17. *Scale of charges for use of dry-dock.*

These new provisions are adapted from Bombay Act I of 1899 and are intended to assimilate the provisions of the Karachi Port Trust Act with those of the Bombay Port Trust Act as amended.

Clause 18. *Power to Commissioner in Sind to sanction remission of tolls and charges.*

The object of this amendment is explained in the Statement of Objects and Reasons para. 2 (ii).

Clause 19. *Recovery by suit of rates, charges and penalties.*

This clause is taken from Section 16 of Bombay Act I of 1899, which amends the Bombay Port Trust Act. The necessity for it is explained in the Statement of Objects and Reasons.

Clause 20 (1). *Contribution by the Port Trustees towards the cost of harbour and dock police and medical services in the Port.*

A moiety of the cost of the Police establishment for the Karachi Harbour is

at present borne by the Port Trust under Section 61 (3) of the Karachi Port Trust Act.

The new clause is wider in scope than the existing provision and further enables Government to call for a contribution towards the cost of medical services in the Port. It may be stated that this amendment is based on a similar one proposed to be embodied in the Bill to amend the Bombay Port Trust Act, from which, however, it was omitted as it was found to be contentious. Government however decided to retain it in the Karachi Bill.

Clause 20 (2). *Grant of wound pensions or compassionate allowances to pilots or their surviving relatives.*

This amendment is consequent on the addition proposed to be made to Section 22 by Clause 11 of the Bill.

Clause 20 (3). *Power to Commissioner in Sind to sanction special charges.*

This amendment was proposed* by the Board of Trustees. Under Section 61 Clause (7) of the Act the sanction of Government has to be obtained to special charges, which do not fall under one of the objects for which the rest of the section provides, but as it is considered unnecessary to obtain any sanction beyond that of the Commissioner in Sind in such cases, it is proposed to empower that officer to sanction such charges.

* Letter from the Chairman, Karachi Port Trust, No. P.T.—5819, dated the 14th November 1896.

Clause 21. *Definition of public securities.*

This amendment follows Section I of Bombay Act I of 1899.

Clause 22. *Investment of Sinking Funds and surplus moneys by Karachi Port Trust in their own debentures.*

These new provisions are on the model of Sections 2, 3 and 4 of the City of Bombay Improvement Act (I of 1898).

Clause 23. *Amendment of proviso to Section 70 of the Act prescribing a penalty for being interested in contracts with the Board.*

As explained in the Statement of Objects and Reasons this clause is intended to amend the proviso to Section 70 of the Act, so as to bring it into harmony

with Section 15 of the Act as it will stand when amended by clause 7 of the Bill.

Clause 24. *Penalty for intentional mis-statements in the description of goods on which tolls or other charges are leviable.*

This amendment was suggested by the Port Trustees, Karachi, for the following reasons :—

"The addition of the word 'description' is very necessary as it frequently happens that goods are purposely mis-described so as to be charged a lower rate of wharfage, for example, small zinc baths are classed as buckets, tinware as hardware and bales containing $\frac{3}{4}$ths silk piece-goods and $\frac{1}{4}$th cotton or woollen piece-goods as assorted goods."

Clause 25. *Recovery by the Board of damage caused by a vessel which has a pilot on board.*

This amendment is taken from Section 20 of Act I of 1899, which amends the Bombay Port Trust Act. In regard to the amendment of the latter Act, the Port Trustees, Bombay, addressed Government as follows in October 1888 :—

"One or two serious accidents have occurred in recent months in connection with the docking of vessels at the wet docks. In one case, that of the Italian Steamer '*Bormida*,' owing to a direct disobedience of the pilot's orders, the steamer having been moved full speed ahead instead of full speed astern as ordered, the bridge over the Victoria Dock Gates was seriously injured and has cost Rs. 1,778 to repair and the wooden beam, that protects the gates themselves, was cut through. Had the bridge not broken the force of the shock, there is little doubt, that the gates themselves must have given way, when the dock would have been thrown out of use until new gates could be provided.

"2. Section 84 of the Port Trust Act gives the Trustees summary power to recover damages caused through the negligence of those on board, but it contains a proviso that 'no such warrant shall issue if the vessel was at the time under the orders of a duly authorized officer in the pilot service.'

"3. The Trustees are satisfied that no summary process should issue when the facts are obscure or are seriously disputed, but they do not think that the mere presence of a pilot on board should deprive them of the benefit of the simple procedure laid down in Section 84, and they accordingly submit for the favourable consideration of Government, that the following words drafted by the Honourable the Advocate General should be added to Section 84 of the Port Trust Act, 1879, 'unless such damage be caused by disobedience to (or in no way attributable to) such orders.'

"4. If this addition meets with the approval of Government, I am to ask that the necessary amendment of the Port Trust Act be made at the convenience of Government.

APPENDIX A.

Government Resolution No. 3462 of 1896.

GENERAL DEPARTMENT.

Bombay Castle, 6th August 1896.

Letter from the Commissioner in Sind to the President, Karachi Municipality, and the Chairman, Karachi Port Trust, No. 304, dated the 9th February 1896 :—

"I much regret that the assessment controversy between the Municipality and the Port Trust still remains unsettled, and I shall be glad to know precisely what are the points on which the two bodies are now at issue.

"2. Secondly, it occurs to me that, if it is not already too late, advantage might well be taken of the fact that a Port Trust Amendment Act is at this moment before the Legislative Council to insert some provisions for securing an equitable settlement of such differences in future without resort to tedious and expensive legal proceedings.

"3. It seems unnecessary to suggest the insertion of any definition of areas, for the boundaries either of the Port Trust or the Municipality can, as the law now stands, be declared (and varied from time to time if necessary), by notification and therefore so far as the future is concerned an amended notification would suffice to remove all ground of conflict. As regards past claims, I understand that according to legal opinion the high-water mark which is the boundary must be interpreted as including in the municipal area all gradual accretions to the land but as excluding artificial reclamations. For the future, I thnik, such reclamations should be included in municipal limits, as it would be inequitable to allow buildings or even streets (as in Bombay) to spring up and, whilst they actually take their place as part of the city and participate in the general benefit of municipal administration, to allow them a privileged immunity from all municipal obligations.

"4. At the same time there are special properties such as docks and quays and structures connected with machinery required for the business of the Port which cannot be assessed on the system applied to ordinary residences and in respect of which it is most important to prevent trade from being unduly hampered. The principles to be applied in order to ascertain the amount at which a dock property may be reasonably expected to let from year to year are highly technical and elaborate and have been evolved out of much litigation in the English Courts. If there were proper security that only a moderate assessment would be imposed and that expensive controversies would be avoided, I imagine that the boundary question would sink into insignificance.

Note.—The City of Bombay Municipal Act following English precedents takes as the basis of rateability the rent at which buildings or lands may reasonably be expected to let from year to year (Section 154). The Karachi Municipal Rule, under Section 32 (*h*) of the District Municipal Act, describes the house rate as leviable on all buildings or lands *from which an income is derived.* Mr. Latham appears in his opinion (see paragraph 61 of the Legal Remembrancer's printed Report) to have held, that this distinction of terms makes no difference as to the rateability. He may no doubt be correct, but at first sight the difference seems important, and not having his reasons before me, I think, the distinction should not be overlooked.

"5. In the assessment, as the term is usually employed, there are two matters to be determined, first, the rateable value of the premises, and then the amount to be paid. And in respect of both, I think, it would be to the advantage of the Port Trust and the Municipality if provisions were inserted in the law analogous to those contained in Section 145 of the City of Bombay Municipal Act (3 of 1888). It seems to me that in Karachi as regards rateable value it would be well to prescribe that in the event of the Municipality and the Port Trust Board being unable to come to an agreement each should appoint an arbitrator with the Commissioner in Sind as umpire and that the decision so arrived at should be final and should hold good, as in Bombay, for a period of five years; and that the amount to be paid on the rateable value so determined should, as in Bombay, be fixed at nine-tenths of the sum which would be payable by an ordinary owner of buildings or lands in the city. It would also be necessary to insert in the new section the dates on which the annual payment thus fixed should be made.

"6. I request that you will take the earliest possible opportunity of inviting the opinion of the $\frac{\text{Municipal Commissioners}}{\text{Port Trustees.}}$ on these suggestions and acquaint me with the result. A similar letter has been addressed to the $\frac{\text{President of the Municipality}}{\text{Chairman of the Port Trust Board.}}$"

Memorandum from the Commissioner in Sind, No. 395, dated the 9th February 1896—

Forwarding copy of the letter referred to above, with reference to the Karachi Port Trust Amendment Bill now before the Legislative Council and the concluding paragraph of the Legal Remembrancer's letter attached to Government Resolution No. 1572, dated the 19th April 1895.

Memorandum from the Legislative Department of the Secretariat, No. 62, dated the 19th February 1896—

Re-transferring the papers forwarded with this Department memorandum No. 757, dated the 15th February 1896; and drawing attention to paragraph 6 of the memorandum from that Department No. 202, dated the 25th September 1890.

Memorandum from the Commissioner in Sind, No. 380, dated the 17th February 1896—

Forwarding, in continuation of his office No. 305, dated the 9th idem, copy of a letter No. A., dated the 15th idem, from the Chairman, Karachi Port Trust, who states that he had an interview on the 14th idem, with the President and Secretary of the Karachi Municipality on the subject of the Commissioner in Sind's letter No. 304, dated the 9th idem, and that he presided over a meeting of the Port Trust at which it was considered; observes that he has every reason to believe that the Municipality will at their special general meeting formally accept Mr. Batty's decision on certain points connected with the question as to whether the Municipality of Karachi can levy taxes on property vested in the Karachi Port Trust, with the reservation that a further reference be made to him regarding 49th paragraph of his report No. 155, dated the 31st January 1895, on the subject, and that the Port Trustees are willing that the reference should be made; and remarks as follows:—

"9. Both bodies fully agree to the proposals made in the 5th paragraph, and I trust it may be possible to have two sections, one analogous to Section 145 of the City of Bombay Municipal Act and the other providing for arbitration on disputed questions regarding rateable value inserted in the Port Trust Amendment Act which is now before the Legislative Council."

the Commissioner remarking as follows:—

"2. The Acting Commissioner understands that his suggestion as to the insertion of a new section in the Act on the lines indicated is approved by both of the local bodies, and, with reference to the area of liability in the past he would suggest a reference to the Legal Remembrancer as proposed by Mr. Giles.

"3. The future area of liability would depend on the terms of notifications issued from time to time defining the municipal boundary, and the method of assessing that liability would be regulated by the new section if the section becomes law.

"4. If such a section is incorporated in the Act, the Commissioner would not recommend any specific statutory immunity in respect of piers, wharves, &c., as it is not desirable to take a new departure from established precedent, and the terms of the section should be a sufficient safeguard against the trade of the Port being unduly burdened with municipal taxation."

Telegram from the Commissioner in Sind, dated the 21st February 1896:—

"69. Karachi port assessment; see my letter 380 of 17th since which Karachi Municipality has passed Resolution saying without legislation they can by addition to rules provide for special rates and assessment of trust property. President adds they agree present opportunity suitable for insertion in Bill provision for equitable settlement. I recommend that Bombay precedent be followed."

Memorandum from the Commissioner in Sind, No. 454, dated the 24th February 1896—

Forwarding, in continuation of his No. 380, dated the 17th idem, and telegram No. 69, dated the 21st idem, the following letter No. G.—977, dated the 17th idem, from the President, Karachi Municipality:—

"I have the honour to inform you that your letter No. 304, General Department, dated 9th February 1896, was placed before an adjourned special general meeting of the Karachi Municipality held this morning in the Municipal Office at 8 A.M., and the following is the Resolution then passed with reference thereto—

RESOLUTION.—'The President to inform the Commissioner as to the points at issue between the Municipality and the Port Trust.

'The Municipality are willing to abide by the decision of Government based on the opinion of its Law Officers as regards those points.

'The Municipality are of opinion that without resort to fresh legislation they can provide for special rates being fixed for Port Trust property and the assessment thereof by making suitable alterations in the present rules relating to house and water-rate contained in Appendix E.'

"2. The main point at issue in fact I may say the only one between the Karachi Municipality and the Port Trust seems to be whether the term 'high-water mark' in the various Government notifications relating to the boundaries of the Karachi Munici-

pality includes all reclamations from the sea then in existence by whomsoever made, whether by the Municipality, the Port Trust, or a private individual. This question was put to Government in the letter No. G.—1295, dated 2nd March 1891, from the late Honourable Mr. Oodharam, President of the Karachi Municipality, to the address of the Commissioner in Sind. On this point being settled, there appears no reason why a complete arrangement cannot be arrived at. Any difference of opinion between the two bodies regarding the dates at which improvements were effected may be referred to arbitration by the appointment of an independent engineer by each of the two boards and a third by the Commissioner in Sind. It is, however, very unlikely that the services of these gentlemen will ever be required as the records of the Port Trust will be able to show conclusively when the works carried out by them were completed.

"3. With reference to the second paragraph of your letter under reply, the Municipality agree that the present moment is opportune for the insertion in the Bill now before Council of some provision for ensuring an equitable settlement of future differences between the two boards without having resort to expensive legal proceedings.

"4. I quite agree with your remark that 'for the future' (whatever may be the decision as to the past) all such reclamations should be included in municipal limits and shall feel much obliged if you will kindly take steps to have the necessary notification published.

"5. Paragraphs 4, 5 and 6 of your letter are dealt with in the last clause of the Resolution passed at this morning's meeting, *viz.*, the present Municipal Act (Section 21 of the Principal Act and Section 32 (*h*) of the Amendment Act), the Municipality is empowered to make all necessary rules with regard to fixing both the rateable value and also the amount to be paid and the members of the Municipality think that an addition to Appendix E of the rules would be a simpler mode of effecting the desired object than recourse to legislation."

the Commissioner remarking as follows :—

"No new addition can be made to the Municipal Rules without the sanction of the Commissioner in Sind as exercising the powers of a Local Government with whom also rests the power of defining the municipal area by notification from time to time. And as reasonable objections might be raised to the inclusion within such area of the *whole* of the Trust property (*e.g.*, docks, wharves, &c.), unless some special provisions, similar to those contained in Section 145 of the City of Bombay Municipal Act, were made as to assessment it seems more satisfactory that those provisions should as in Bombay be secured by statute than by a municipal rule. The general power of the Municipality to determine the rates is not impaired by those provisions."

Memorandum from the Marine Department of the Secretariat, No. 115-G., dated the 20th March 1896.

Letter from the Remembrancer of Legal Affairs, No. 957, dated the 14th July 1896 :—

"The point raised in the accompaniments to Government memorandum No. 1889, dated 25th April 1896, was, I have the honour to submit, considered by the Honourable Mr. Latham in his opinion, dated 24th December 1889, and answered in paragraph E of that opinion, which is to the effect that the last Notification of 1888, defining the limits of the Karachi Municipal District, operated to include all reclamations which at the time of its issue stood above high-water mark.

"2. Paragraph 49 of my No. 155 of 31st January 1895 had reference solely to the question discussed in the paragraphs immediately preceding, *viz.*, the effect of a recession of the high-water line in extending the application of the notification. But in paragraphs 34 and 35 of the same report it was pointed out that according to English cases, in the case of land artificially reclaimed, public inclusion within the limits is necessary before liability can arise.

"3. Now the Notification of 1888 operated as such public inclusion.

"4. It is true that the recent reclamations were not specially mentioned, and it would appear were not even taken into special consideration when that new notification was issued.

"5. But presumably the intention was that the new notification should operate on the same *principles* as that which it superseded, and should include all at the time of issue actually within high-water mark, irrespective of any question as to the manner in which it had been brought within high-water mark.

"6. It is urged that there is no evidence of an intention to make a new departure in the Notification of 1888.

"No doubt there was no new departure intended so far as concerns the *grounds* upon which liability was to depend.

"7. The change which resulted was not due to a change of policy but to a fresh declaration that the same tests should again be applicable.

"8. For these reasons, I think that the view taken by the Karachi Municipality which appears to be in accordance with the opinion of the Honourable Mr. Latham is correct, and that it must be taken to have been the intention in issuing the Notification of 1888 not to exclude any lands or buildings which bore the same character as those made liable by the prior notification."

RESOLUTION.—Copy of the letter from the Remembrancer of Legal Affairs should be forwarded to the Commissioner in Sind for information.

2. The question regarding the amendment of the Karachi Port Trust Act is under the consideration of the Marine Department.

APPENDIX B.

Extract paragraph 12 *of the letter from the Commissioner in Sind, No.* 1417, *dated the* 3*rd July* 1896.

* * * * * *

12. I desire also to ask that the Government will insert in the amended Act a new section, as given below, so as to settle disputes between the Port Trust and Municipality as regards rating. It will suitably come under Chapter IX, Miscellaneous. The Port Trust agrees, and so does the Municipality as regards future disputes, though the latter think that the existing law and legal opinions that they have obtained will suffice for disputes in the past. I consider most certainly that matters have come to such a pass that the legislature should interfere, for the following reason.

For some years past, the Karachi Municipality have had a dispute with the Karachi Port Trust as to the rating of wharves, jetties and the like, based mainly on the fact that high-water mark is the boundary of the two bodies' jurisdictions, and the quarrel relates as to the rating by the Municipality of reclamations and of jetties extending beyond old high-water mark into the sea. The Legal Remembrancer has written a very long and learned opinion on the subject (*vide* Government Resolution No. 1572 of 19th April 1895). In para. 86 of this, the Hon'ble Mr. Batty proposes that a short section should be inserted in the Bill to amend the Port Trust Act. The Hon'ble Mr. Batty's idea no doubt was to secure for the Port Trust such exemption from burdensome Municipal taxes as Government thought proper. But Sir Charles Ollivant, who, from his long Bombay experience, is probably the most competent authority on the practical way of dealing with such questions considered that a section like Section 145 of the City of Bombay Municipal Act (III of 1888) was wanted. Between the Municipal law of Bombay and Karachi there is, of course, a great difference. In the former, the mode of assessing is laid down in detail, but in Karachi (which is still bound by the swadding clothes of the District Municipal Act) the Municipality can levy any tax they please, subject to the sanction of the Local Government (myself), although they can be called on by the Local Government (Section 41, Act II of 1884) to remove any objectionable features in taxation. And the Local Government can also by a revision of boundaries, exempt from taxation any Port Trust property that it pleases. I concur, however, entirely in thinking that the waste of time, the loss of income to the Municipality, (which, if it wants any arrears, must—*vide* Mr. Batty's 55th para.—*prosecute* the Port Trust before a Magistrate, and has lately found the recovery of large sums, which should have accrued to it while the controversy was going on, barred by the three months' rule,) and all the evils incidental to a long and unpleasing controversy of the kind should be finally put a stop to by the

legislature. The machinery of the District Municipal Act is clumsy and entirely unsuited to the purpose. *Interest reipublicæ ut sit finis litium.* The present dead-lock is a scandal, and the summoning by the Municipality of the Port Trust before a Magistrate for non-payment of taxes, and the placing of the decision of vastly important and complicated questions in that Magistrate's hands, is a still greater scandal.

The Bombay rating laws have been followed by the Karachi Municipality in their rules. I would, therefore, as I agree entirely with Sir Charles Ollivant, suggest something like the following, but the Hon'ble Mr. Batty will be able to put it into shape :—

(*a*) The Board shall pay annually to the Municipality of the City of Karachi, in lieu of all taxes, tolls and imposts leviable by the said Municipality in respect of the property or some portion of the property vested in the Board, which would otherwise be liable to such taxes, tolls and imposts, a sum ascertained in the manner provided in the following sub-sections.

(*b*) The Board shall, within three months of the passing of this Act, furnish the Municipality with a complete list of all lands, buildings and other things constructed by or on behalf of them and vested in them, and of all land, buildings or other things constructed by or on behalf of others on land belonging to them or in their charge in Karachi, whether in the limits of the Municipality or otherwise. And the Municipality shall, with due regard to the rules duly framed and approved from time to time under Section 32, clause (*h*) of Bombay Act II of 1884, transmit to the Board, within one month from the date of receipt, a detailed account of the taxes, tolls and imposts due for the year then current from the Board on account of the buildings and other things constructed and vested in the Board, and the Board shall pay nine-tenths of the amount so found due to the Municipality within two months.

(*c*) If the Board have reason to object to the account for any reason whatever, it shall, within two months, submit its objections to the Commissioner in Sind, who shall call on the Board and the Municipality each to appoint an arbitrator, and the Board and the Municipality shall each be bound to appoint an arbitrator accordingly. The arbitrators shall report their opinions on the Board's objection to the Commissioner. If the arbitrators agree, their decision shall be final ; but if not, the decision of the Commissioner in Sind shall be final. The sum claimed by the Municipality, or, if objected to, the sum decided to be due by the arbitrators or by the Commissioner, shall be payable for the year in which the decision was passed and for each of the four succeeding years, on the 30th September each year in lieu of all taxes, tolls and imposts whatsoever, but shall be subject to proportionate variations, if the number of lands, buildings or other things vesting in the Board materially increases or decreases, and shall be altogether revised in the fifth year and every fifth year following, in the same manner as provided for upon the passing of this Act. Provided, also, that it shall be lawful to the Municipality at any time to claim, and for the Board to pay, any additional sum, if agreed upon between the Municipality and the Board, for an additional supply of water or for additional services rendered.

This draft has not been submitted to the bodies concerned, and, as is usual with disputants, both would very likely take exception to it on different grounds. The gist of it is that the Port Trust is to give the Municipality a list of every thing they have got, whether within or beyond high-water mark. The Municipality will send in a bill for nine-tenths of the amount, as in Bombay. If the

Port Trust object, the matter will go to arbitration, and the Commissioner will decide, if the arbitrators disagree, by the light of the Hon'ble Mr. Batty's decision. The present conflict will then be at rest for five years, but provision is made for increased services rendered by the Municipality in the meanwhile to be paid for or for additional rateable buildings to be taxed. The proposed section says nothing about arrears claimable by the Municipality. The Hon'ble Mr. Batty shows that they were obliged, under the present law, to take proceedings within three months of the taxes becoming due, so the Municipality must settle as best it can with the Port Trust about the arrears which have accumulated and become incapable of legal recovery while the dispute has been going on.

I append a copy of Sir Charles Ollivant's letter addressed to the Municipality and Port Trust, No. 304 of 9th February 1896, which shows his views on this subject.

APPENDIX C.

No. 1764 of 1896.

Poona, 7th December 1896.

With reference to Government memorandum No. 734 of 24th November 1896, Marine Department, requesting me to furnish a draft of a new section for insertion in the Bill to amend the Karachi Port Trust Act, I beg, first of all, to draw attention to para. 5 of the letter of the Acting Commissioner in Sind (Sir C Ollivant) No. 304 of 9th February 1896, and to para. 9 of the same officer's memorandum No. 380 of 17th idem, both quoted in the preamble to Government Resolution No. 3462 of 6th August 1896.

2. In the latter passage it is stated that both the Port Trust Board and the Municipality of Karachi fully agree to the proposals made in the 5th para. (*i.e.* of the letter No. 304 of 9th February 1896), and that the Commissioner trusts that it may be possible to have inserted in the Port Trust Amendment Bill "2 sections, one analogous to Section 145 of the City of Bombay Municipal Act and the other providing for arbitration on disputed questions regarding rateable value."

3. I have appended drafts of the proposed provisions in which I have endeavoured, so far as possible, to embody the suggestions made by Sir C. Ollivant: suggestions with which the Commissioner in Sind (Mr. James) states that he entirely agrees (*vide* extract para. 12 of his letter No. 1417 of 3rd July 1896).

4. In so doing, however, I have thought it necessary to modify, very considerably, the greater portion of the draft suggested by the Commissioner in Sind, in order (1) to bring out clearly the distinction (pointed out in para. 5 of the letter of Sir C. Ollivant already referred to) between the rateable value of the premises, and the amount to be paid, and (2) to follow more closely the arrangement of Section 145 of Bombay Act III of 1888.

5. But the main reason why I have specially referred above to the statements of Sir C. Ollivant on this subject is that, when we examine the provisions of Section 145 of the Bombay Municipal Act, a difficulty arises as to the mode in which the suggestion quoted in para. 2 *supra* can best be carried out, *viz.* to frame two sections, one analogous to the said Section 145 "and the other providing for arbitration, etc." Section 145 of the Bombay City Act gives only one authority by which the rateable value can be fixed, *viz.* "the Governor in Council." There is no provision for any arbitration. In fact it would seem that, if we are to follow the principle laid down in this section (taking the Commissioner in Sind as representing, for this purpose, Government or the

'Governor in Council') there would be no room, and no necessity for providing (in case of disagreement) for the appointing of arbitrators by the Board and the Municipality with the Commissioner in Sind as umpire, as suggested in para. 5 of Sir Charles Ollivant's letter of 9th February 1896.

6. For purposes of easy reference it will be convenient here to transcribe Section 145 of Bombay Act III of 1888:—

Amendment of Section 36, Bombay Act VI of 1879.

"145. For Section 36 of the Bombay Port Trust Act, 1879, the following section shall be substituted, namely:

Lump payment to be made to the Municipality in lieu of general tax.

"36. The Board shall pay annually, on the thirtieth day of September, to the Municipal Corporation of the City of Bombay, in lieu of the general tax leviable by the said corporation in respect of the property, or some portion of the property, vested in the Board, which would otherwise be liable to be assessed to the said tax, a sum ascertained in the manner provided in sub-sections (2) and (3).

"(2). The rateable value of the buildings and lands in the city vesting in the Board in respect of which the said tax would be leviable from the Board shall be fixed from time to time by the Governor in Council. The said value shall be fixed, with a general regard to the provisions contained in the City of Bombay Municipal Act, 1888, concerning the valuation of property assessable to property-taxes, at such amount as the Governor in Council shall deem to be fair and reasonable. Every such decision of the Governor in Council shall hold good for a term of five years, subject only to proportionate variation, if in the meantime the number or extent of the buildings and lands vesting in the Board materially increases or decreases.

"(3) The sum to be paid annually to the corporation by the Board shall be nine-tenths of the amount which would be payable by an ordinary owner of buildings or lands in the city, on account of the general tax, on a rateable value of the same amount as that fixed under sub-section (2)."

7. There can be no doubt, I think, that the main difficulty in this scheme will be to arrive at an enumeration and a valuation of the assessable property of the Port Trust which will be acceptable to both parties. Judging from the past and from the remarks in the penultimate clause of para. 12 of the Commissioner's letter of 3rd July 1896, there will almost certainly be difficulties and disagreements on these subjects, and the Commissioner in Sind will be bound to intervene in order to bring about any settlement.

8. In these circumstances it is for the consideration of Government whether it would not be better at once to follow the precedent of Section 145 of the Bombay City Municipal Act and to make the Commissioner in Sind the sole recognised authority for fixing the valuation, inserting at the same time any provisions, which may prove advisable regarding the mode in which the Municipality and the Port Trust Board are to supply the Commissioner with all necessary information on the subject and with clear statements of their respective claims and objections.

9. At the same time I have thought it advisable to draft a section (*vide* draft A below) embodying, so far as seemed possible, the two objects referred to in para. 2 *supra* and following, to a great extent, the lines proposed in Mr. James' draft. The alternative draft (draft B), also submitted for the consideration of Government, is drawn (as stated in the last preceding para.) much more closely upon the model of Section 145 of Bombay Act III of 1888.

10. As I have already explained at some length the principles on which I have made the two alternative drafts, I will only add some brief remarks on the main points on which I have either conformed to the draft suggested by the Commissioner in Sind, or have ventured to differ from it. Most of these remarks will refer to draft A, which approximates the more to the draft submitted by Mr. James.

11. The Commissioner's draft does not appear to provide any means by which the Board and the Municipality may come to an agreement as to *rateable value*, before the Commissioner in Sind is called on to intervene "if the Board have reason to object to the account (of the Municipality) for any reason whatever" (clause (1) of draft). I have in draft A, sub-section (2), attempted to provide a procedure to be followed for this purpose. I have already pointed out that the Commissioner's draft does not draw the necessary distinction between the rateable value and the amount of tax to be assessed thereon according to the rules of the Municipality.

12. The complete list of "all lands, buildings whether in the limits of Municipality or otherwise" (clause (*b*) of Commissioner's draft) is apparently intended to cover wharves, piers, etc., and to avoid the long-standing difficulties as to the property of the Board above and below "high-water mark." I have, therefore, preserved the wording suggested by the Commissioner on this point. *Cf.* the opinion of Sir C. Ollivant in para. 3 of his letter of 9th February 1896, that, for the future, even artificial reclamations should be included in municipal limits.

13. In sub-section (2) of both drafts I have kept the phrase "with a *general* regard" (to the rules, etc.) used in the corresponding provision of Section 145 of Bombay Act III of 1888, because a greater discretion is thereby allowed and because it is evidently intended not to apply the rules of the Municipality *strictly* to some of the property, at least, of the Board. I allude to property which for the present, at any rate, (though the boundaries may be changed by Government notification) does not lie "within municipal limits" and to property (*e.g.* wharves, piers, etc. "capable of profitable occupation"), which will have to be assessed according to the principles stated in the report of my predecessor, the Hon'ble Mr. Batty, No. 155 of 31st January 1895, printed as an accompaniment to Government Resolution No. 1572 of 19th April 1895. *Cf.* paras. 59 to 80 of the said report, with special reference to para. 78 in which the various principles of valuation are summarised.

14. Sub-section (4) of draft A. I am doubtful whether the words "Provided also, etc.," placed in red-ink brackets should be retained or not. They are taken from the concluding portion of clause (*c*) of the Commissioner's draft. No such provision is to be found in Section 145 of the Bombay City Municipal Act. It is to be noted also that the tax which would correspond in Karachi to the 'general tax' mentioned in Section 145 would, apparently, be the house-rate or property-tax of 3 per cent. on the assessed annual value of lands and buildings, prescribed in the rule quoted in para. 59 of the Hon'ble Mr. Batty's No. 155 of 1895. It would, therefore, appear to be quite distinct from a conservancy-cess or a water-rate, which are separately dealt with in Sections 141 and 142 of Bombay Act III of 1888. Moreover the Commissioner in Sind states that "the Bombay rating laws have been followed by the Karachi Municipality in their rules." In these circumstances it would seem better to omit the proviso in question, since it would more naturally form the subject of a separate arrangement between the Board and the Municipality.

15. Sub-section (5) of draft A and sub-section (4) of draft B. These similar provisions are modelled upon sub-section (3) of the section given in Section 145 of Bombay Act III of 1888. They deal with the actual *amount to be paid* by the Board, *i.e.* nine-tenths of the rate, not exceeding 3 per cent. on the rateable value of the property of the Board, assessed as aforesaid, and leviable under the rules of the Municipality.

A. S. MORIARTY,
Acting Remembrancer of Legal Affairs.

Draft A.

Proposed new section 9, to be inserted in the Bill to amend the Karachi Port Trust Act, 1886.

Insertion of a new section after Section 28 of Bombay Act VI of 1886.

9. After Section 28 of the Karachi Port Trust Act, 1886, the following section shall be inserted, *viz.*:—

Draft A.

Lump payment to be made to the Municipality in lieu of property-tax.

28A. (1) The Board shall pay annually, on the 30th day of September, to the Municipality of the City of Karachi, in lieu of the property-tax leviable by said Municipality in respect of the property, or some portion of the property, vested in the Board, which would otherwise be liable to be assessed to the said tax, a sum ascertained in the manner provided in sub-sections (2), (3), (4) and (5).

(2) In order to fix the rateable value of the property vesting in the Board, the Board shall, within (three) months of the passing of this Act, furnish the Municipality with a complete list of all lands, buildings, and other constructions made by or on behalf of them and vested in them, and of all land, buildings and other constructions made by or on behalf of others on land belonging to them or in their charge, whether in the limits of the Municipality or otherwise. The said value shall be estimated by the Municipality with a general regard to the rules duly framed and approved from time to time under Section 32, clause (*h*) of Bombay Act II of 1884, concerning the valuation of property assessable to property-tax, at such amount as the Municipality shall deem to be fair and reasonable. And the Municipality shall transmit the said valuation to the Board within (one) month after receipt of the aforesaid list of property, and shall consider any objections whatsoever which the Board may, within (one) month of the receipt thereof, make to the said valuation; and the Municipality, if it deems the objections (if any) of the Board valid, shall modify its estimate accordingly.

(3) If, within (six) months of the passing of this Act, the Board and the

Municipality shall be unable to agree with regard to the estimate or any portion of the estimate of the rateable value of the aforesaid property, the Board shall within 7 days of the expiry of this period, submit to the Commissioner in Sind their objections to the valuation made by the Municipality. The Commissioner in Sind shall thereupon call on the Board and the Municipality each to appoint an arbitrator, and the Board and the Municipality shall each appoint an arbitrator accordingly. The arbitrators shall report their opinions on the Board's objections to the Commissioner in Sind. If the arbitrators agree, their decision shall be final; but if not, the decision of the Commissioner in Sind shall be final.

(4) Every decision as to such rateable value, whether arrived at under sub-section (2) or sub-section (3), shall hold good for a term of five years, subject to proportional variation, if in the meantime the number or extent of the buildings, lands or other property vesting in the Board materially increases or decreases, and shall be altogether revised in the fifth year, and every fifth year following, in the manner hereinbefore prescribed, so far as the same may be applicable. (Provided also that it shall be lawful for the Municipality at any time to claim, and for the Board to pay, any additional sum, if agreed upon between the Municipality and the Board, for an additional supply of water or for additional services rendered).

(5) The sum to be paid annually to the Municipality by the Board shall be nine-tenths of the amount which would be payable by an ordinary owner of buildings or lands in the city, under the rules of the Municipality concerning the levy of property-tax, on a rateable value of the same amount as that fixed under either sub-section (2) or sub-section (3).

Draft B.

Lump payment to be made to the Municipality in lieu of property-tax.

28A. (1) The Board shall pay annually, on the 30th day of September, to the Municipality of the City of Karachi, in lieu of the property-tax leviable by the said Municipality in respect of the property or some portion of the property vested in the Board, which would otherwise be liable to be assessed to the said tax, a sum ascertained in the manner provided in sub-sections (2), (3) and (4).

(2) The rateable value of the lands, buildings and other constructions vesting in the Board in respect of which the said tax would be leviable from the Board shall be fixed from time to time by the Commissioner in Sind. The said value shall be fixed, with a general regard to the rules duly made and approved from time to time under Section 32, clause (*h*) of Bombay Act II of 1884, concerning the valuation of property assessable to property-tax, at such amount as the Commissioner in Sind shall deem to be fair and reasonable. For the purpose of making such valuation the Board shall furnish the Commissioner in Sind, within (three) months of the passing of this Act, with a complete list of all lands, buildings and other constructions made by or on behalf of them and vested in them, and of all land, buildings and other constructions made by or on behalf of others on land belonging to them or in their charge, whether in the limits of the Municipality or otherwise. And the Commissioner in Sind may call on the Board and the Municipality each to appoint a delegate to aid him in making the said valuation, and the Board and the Municipality shall each appoint a delegate accordingly.

(3) Every such decision of the Commissioner in Sind shall hold good for a term of five years, subject only to proportional variation, if in the meantime the number or extent of the lands, buildings and other constructions vesting in the Board materially increases or decreases.

(4) The sum to be paid annually to the Municipality by the Board shall be nine-tenths of the amount which would be payable by an ordinary owner of buildings or lands in the city under the rules of the Municipality concerning the levy of property-tax, on a rateable value of the same amount as that fixed under sub-sections (2) and (3).

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on 31 October, 2019

APPENDIX D.

No. 204 of 1898.

Commissioner's Office,
Camp Jacobabad, 18th January 1898.

In returning these papers the Commissioner in Sind would remark that, as stated by the Legal Remembrancer, draft A follows more closely the suggestions made by Sir Charles Ollivant and himself and is what was contemplated with the concurrence of the Municipality and the Port Trust. And Mr. James with one reservation prefers it to draft B which his *locum tenens* signified his approval to. The Port Trustees now however approve of draft B, but the Municipality of Karachi, while approving of draft A, state that, instead of appointing *arbitrators* in case of disagreement between the two bodies as to the rateable value of Port Trust properties, they would prefer the Commissioner in Sind to fix the rateable values with the aid of delegates or representatives appointed by the two bodies (as in draft B). Mr. James thinks this a very good suggestion and he would accordingly recommend the substitution of the last sentence of sub-section 2 of draft B for the last two sentences of sub-section (3) of draft A. This would leave it optional with the Commissioner whether to call for delegates or not. In practice he would probably invariably do so but it may happen that the only point of difference is one that he may be able to decide without such help and there would be no constraint upon him.

2 In Mr. James's opinion to independent bodies like the Municipality and Port Trust, should be left to decide the rateable value of the latter's property between themselves and that only in case of disagreement should the Commissioner be referred to. He is aware that in Bombay the Governor in Council fixes the rateable value, and, although a similar procedure in Karachi would involve very considerable labour on the Commissioner in Sind, he would, independently of this consideration, like official interference avoided if the two bodies can amicably settle their differences or at any rate until it is found that they cannot agree.

3. The revision of the municipal boundaries is now, at the request of the Commissioner, under the consideration of the Municipality, and the manner in which the rateable value of properties such as wharves and docks should be ascertained, though difficult, is a matter of detail. It does not however affect the provisions of the draft, new section, and the Commissioner would suggest with reference to paragraph 12 of the Legal Remembrancer's report, that the words "all lands, buildings .... whether in the limits of the Municipality or otherwise" be allowed to stand.

4. With reference to paragraph 14 of Mr. Moriarty's letter the Commissioner would recommend that the proviso run as follows :—

> "Provided that nothing in this section shall affect the liability of the Port Trust properties to any other description of tax or cess which the Municipality may lawfully with the sanction of the Commissioner impose on similar properties in the municipal area."

R. GILES,
for H. E. M. JAMES,
Commissioner in Sind.